

## REMARKS

### **A. Background**

The present Amendment is in response to the Office Action mailed April 28, 2008. Claims 4-7, 9, 11-15, 17-20, and 22 were previously canceled and claims 25-29 were previously withdrawn. Claim 1 is amended, claims 25-29 are canceled, and claims 30-38 are added.<sup>1</sup> Claims 1-3, 8, 10, 16, 21, 23-24, and 30-38 are now pending in view of the above amendments.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

### **B. Prior Art Rejections**

#### **1. Rejections Under 35 U.S.C. § 103**

The Office Action rejected claims 1-3, 8, 10, 21, 23, and 24 under 35 U.S.C. § 103(a) as being unpatentable over EP 861638 (*Pinchuk*) in view of U.S. Patent No. 5,695,498 (*Tower*).<sup>2</sup> Applicant respectfully traverses this rejection.

The Office Action asserted that “*Pinchuk* illustrates a stent . . . expanded with ‘essentially’ tubular fixing sections and an ‘essentially’ tubular portion coupled to the fixing portions by tapering portions of predetermined lengths and angles.” (Office Action, page 3.)

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<sup>1</sup> Support for the claim amendments and new claims can be found in the specification as originally filed.

<sup>2</sup> Although the prior art status of the cited art in this and the remaining rejections is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

However, claim 1, has been amended to specifically recite, in part, a “deformable stent . . . said balloon being configured and arranged to expand said stent to form first and second substantially cylindrical fixing portions and a substantially cylindrical portion coupled to said first and second expanded fixing portions by first and second tapering portions.” Applicant respectfully submits that *Pinchuk* does not disclose, teach, or suggest these elements.

Rather, in direct contrast, *Pinchuk* discloses “a first stent-graft . . . ha[ving] a flared proximal end 102, a flared distal end 104, and a midsection.” (See, col. 6, ll. 4-7 (emphasis added); see also, Figures 9-11.) Furthermore, the stent-graft of *Pinchuk* is self expandable and lacks a balloon or catheter. Applicant respectfully submits that the self expanding stent graft in *Pinchuk* is not the same as a “deformable stent . . . said balloon being configured and arranged to expand said stent to form first and second substantially cylindrical fixing portions and a substantially cylindrical portion coupled to said first and second expanded fixing portions by first and second tapering portions,” as recited, in part, by claim 1. Furthermore, even if, *arguendo*, the flared ends as taught by *Pinchuk* could be used to teach one of the claimed elements, they cannot be simultaneously used to teach both the “first and second substantially cylindrical fixing portions” and the “first and second tapering portions” of the stent, as recited, in part, by claim 1. Accordingly, *Pinchuk* does not disclose, teach, or suggest each and every element of claim 1 as currently amended. In addition, *Tower* fails to remedy the deficiencies of *Pinchuk* with respect to claim 1.

The Office Action further asserts that “*Pinchuk* illustrates . . . a stent . . . configured to extend over a balloon catheter.” (Office Action, page 3.) However, claim 1 has been amended to positively recite, in part, “said stent extending over said substantially cylindrical segment of reduced expandability and portions of said first and second substantially cylindrical sections,” of the expandable balloon. Applicant respectfully submits that *Pinchuk* does not disclose, teach, or suggest this element.

Rather, in direct contrast, *Pinchuk* only discloses a self expandable stent, absent a balloon or catheter. (See, col. 6, ll. 32-53.) Applicant respectfully submits that the stent of *Pinchuk* is not the same as a stent “extending over” the expandable balloon, as recited, in part, by claim 1. In addition, *Tower* fails to remedy the deficiencies of *Pinchuk* with respect to claim 1. Specifically, *Tower* teaches that the “stent is mounted over the waist section of the balloon and is

thus locked between the two end sections.” (See, Abstract (emphasis added).) As such, *Tower* appears to teach a stent “locked between the two end sections,” rather than “extending over said substantially cylindrical segment of reduced expandability and portions of said first and second substantially cylindrical sections,” as recited, in part, by claim 1.<sup>3</sup>

Accordingly, because *Pinchuk* and *Tower* fail to disclose, teach, or suggest each and every element of claim 1, as currently amended, Applicant respectfully requests that the rejection under § 103 be withdrawn. In addition, dependent claims 2, 3, 8, 10, 21, 23, and 24, which depend upon independent claim 1, are allowable for at least the same reasons claim 1 is allowable.

Furthermore, Applicant traverses the Examiner’s rejection for obviousness on the grounds that the Examiner’s combination of *Pinchuk* with *Tower* is improper. Applicant respectfully asserts that the combination of *Pinchuk* and *Tower* does not provide any valid reason for the teachings thereof to be changed from their current state in order to teach each and every element of the presently pending claims. For example, *Pinchuk* teaches a self expanding stent having flared ends and a midsection. (See, e.g., col. 6, ll. 4-11, 32-53.) Because of the self-expanding nature of the stent taught by *Pinchuk*, there would be no reason for one of ordinary skill in the art to modify the stent and system of *Pinchuk* to include an expandable balloon and balloon expandable stent. In addition, the stent of *Pinchuk* is configured so that the flared ends expand to a larger diameter than the midsection, such as by using “flexible reinforcement 105’ attached to the midsection 106’ which restricts the midsection.” (See, col. 7, ll. 9-13.) As such, there is no motivation or reason to combine the stent of *Pinchuk* with a modified balloon having first and second end sections “expandable to engage an interior vessel wall” and a “segment of reduced expandability,” because a balloon with different sections, each having different expandability, would be superfluous or unnecessary to deploy the stent as taught by *Pinchuk* since the stent of *Pinchuk* already incorporates its expanded shape. Accordingly, *Pinchuk* and *Tower* fail to provide any valid reason for the teachings thereof to be changed or combined in order to teach each and every element of the presently pending claims.

The Office Action rejected claim 16 under 35 U.S.C. § 103(a) as being unpatentable over EP 861638 (*Pinchuk*) in view of U.S. Patent No. 5,695,498 (*Tower*) as applied to claim 1 above,

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<sup>3</sup> In addition to the foregoing, *Tower* and *Pinchuk* also appear to fail to teach additional elements of independent claim 1. Applicant reserves the right to address the additional deficiencies of *Tower* and *Pinchuk* at a later date.

and further in view of U.S. Patent No. 5,843,116 (*Crocker*). As discussed in more detail above, *Pinchuk* and *Tower* fail to disclose, teach, or suggest each and every element of claim 1 as currently amended. Furthermore, *Crocker* fails to remedy the deficiencies of *Pinchuk* and *Tower* with respect to claim 1. Accordingly, claim 16, which is dependent on claim 1, is allowable for at least the same reasons claim 1 is allowable.

**C. Conclusion**

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

Applicant believes the claims as amended are in allowable form. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner's Amendment, the Examiner is requested to contact the undersigned attorney.

Dated this 19<sup>th</sup> day of September, 2008.

Respectfully submitted,

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